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Federal Communications Commission
Office of the Secretary
445 12th Street S.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket Numbers 96-45 and 97-21

Dickenson County Public Schools
P.O. Box 1127
Clintwood, VA 24228

Billed Entity Number 126569
Form 471 Application Number 239477
Funding Request Numbers 566553 and 566643
Contact: David C. Yates

Letter of Appeal of Administrator's Decision

In accordance with Federal Communication Commission regulations, Dickenson County Public Schools appeals to the Common Carrier Bureau to overturn a decision of the Schools and Libraries Division (SLD) on the above referenced funding requests. We believe the SLD was in error in its interpretation of FCC regulations and ask for reconsideration.

Background

In correspondence dated February 5, 2002, the SLD denied a Dickenson County appeal of two Year Four funding requests under the Universal Service E-Rate program. Specifically, the SLD denied funding for Dickenson County local and long distance telephone service. The issue before the SLD was the fact that Mr. Tim Lovelace, consultant to Dickenson County and employee of Thomas Educational Consulting Inc. (TECI) was listed on the Form 470 as contact person. In its decision the SLD cited FCC precedent in the MasterMind decision as sufficient reasoning for denial. According to SLD interpretation of the MasterMind decision, if a vendor is listed as contact on a particular Form 470, the entire Form 470 is deemed corrupt and must be disqualified. On that basis these funding requests were denied.

Discussion

The MasterMind decision was a result of an unscrupulous vendor targeting hundreds of high discount applicants with the promise of free service in exchange for applicant abdication of competitive bidding responsibilities required under E-Rate regulations. MasterMind would file Forms 470 on behalf of applicants, listing its employee as contact person. After the required 28 day posting period MasterMind would choose itself as

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vendor at highly inflated prices. An associated entity would then grant to the applicant the undiscounted portion of the cost of the service (usually ten percent), resulting in "free" service to the applicant. In the MasterMind decision the Commission stopped short of calling the scheme fraud, rather it was termed waste of program resources. Before the MasterMind scheme was put to an end, the company had received millions of dollars in E-Rate funds. Subsequently, the FCC ruled that applicants taken in by the MasterMind scheme could file for new services and receive E-Rate discounts outside the filing window.

We understand the need to prevent waste, fraud, and abuse of the program; however, we feel that comparing the MasterMind situation to the Dickenson County application is a stretch of reality. First of all, Mr. Lovelace is a trusted member of his community and an employee of TECI, a technology consultant firm for Dickenson County Schools. In this part of the country, far from the Washington beltway, it is not uncommon to have business relationships that may, on their face, appear as conflicts of interest in large cities. We believe the MasterMind decision has been interpreted much too broadly by the SLD in this instance and should be revisited.

The fact is that in small rural communities, such as Dickenson, the pool of specialized experts in the educational technology field is severely limited. Mr. Lovelace is such an expert. He also happened to work for TECI. However, unlike the MasterMind scheme, Dickenson County made the final decision on who would provide services and, Dickenson County would pay the undiscounted 22 percent of bills.

The other factor in the MasterMind case, and possibly the only reason it was discovered, was the outrageously high rates MasterMind was charging for services. Apparently, MasterMind had duped AT&T into providing T1 service to applicants for the incredible sum of \$5,000 per month per line. Again, Dickenson County seeks only the most cost effective services for our needs. The total request for all local and long distance service was only about \$50,000 to serve nine schools and one administrative building. Certainly, this figure reflects a reasonable rate for the service we seek.

As a matter of regulation we feel it is unreasonable to disqualify an entire Form 470 if the contact person is a bidder for only a portion of the service. In this case, TECI, was incapable of bidding on the local and long distance portions of our request because TECI was not a telecommunications "common carrier" and was only eligible to provide internal connections. We feel that the request for funding should also be evaluated on the level of service requested and price reasonableness. We feel the Dickenson County funding requests will stand on their merits.

In four years of E-Rate, Dickenson County has never attempted to defraud the program or waste its resources. We have asked only for services to which we were entitled at rates either on state contract or negotiated in good faith. In Year One of this program, our application was lost by the then Schools and Libraries Corporation and has never been found. We received no funding in E-Rate Year One. We hired TECI, who assigned Mr.

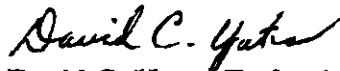
Loveland to assist us with the complex E-Rate application process. In no way did he influence our decision to select vendors of our choice.

By contrast, in funding commitment wave 14 of E-Rate Year Four issued in early February, Roosevelt Elementary School District Number 66, Phoenix, Arizona received a commitment of over \$19,000,000. This school district serves only 18 schools and 11,000 students. This funding comes on top of \$7,000,000 in internal connection funding for Year Three. No doubt, this school district followed the letter of E-Rate regulations in its funding request; however, it is obvious that when the SLD evaluated this request the notion of price reasonableness was not a consideration. Dickenson County only requested a total of about \$230,000 in E-Rate funding.

Finally, the local telephone portion of our E-Rate application was procured under state master contract, negotiated by the Virginia Department of Information Technology (DIT). Local telephone service is obtained through Verizon-Virginia Incorporated, SPIN # 143001422. When issuing bids for telecommunications services under E-Rate, DIT filed a Form 470 USCN: 915120000073811. All Virginia eligible entities may use this USCN to obtain E-Rate discounts. If the Commission declines to revisit the SLD MasterMind policy, we ask that the DIT statewide USCN be substituted for the USCN listed on our funding request.

We ask the Commission to put some reason back into this program and respectfully seek your approval to overturn the SLD decision.

Sincerely,



David C. Yates, Technology Coordinator

CC: Greg Weisiger, VDOE
Congressman Rick Boucher
Senator John Warner
Senator George Allen